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## The Culture of Control in Ireland: Theorising Recent Developments in Criminal Justice

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### Summary

This article uses the theoretical insights in David Garland's *The Culture of Control* to analyse current trends in the Irish criminal justice process. Considerable changes have occurred in the justice system in Ireland, and conceptual constructs such as the indices of change, the crime complex and the responses of the state to the predicament of crime control are useful in seeking to explain and interpret these developments. Although aspects of Garland's thesis are not sustainable in Ireland, his work provides a useful lens through which current Irish criminal justice policy may be viewed.<sup>1</sup>

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<sup>1</sup> \*This article is based on my doctoral research which is funded by the Irish Research Council for the Humanities and Social Sciences.

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## Introduction

In *The Culture of Control: Crime and Social Order in Contemporary Society* (2001) David Garland presents a theoretical analysis of the trajectory of criminal justice policy in the United Kingdom and the United States. This influential book provides an incisive explanation of the dramatic changes in crime control and penal policy which occurred in these two societies in the final quarter of the twentieth century. *The Culture of Control* has had considerable influence on contemporary penological thought and prompted a plethora of reviews and analysis (eg O'Malley 2002; Zedner 2002; Beckett 2001; Loader and Sparks 2004).

Like the UK and the US, the past decades in Ireland heralded a multitude of developments in the criminal process and in penal policy, brought about by legislation such as the Criminal Justice (Drug Trafficking) Act 1996, the Bail Act 1997, the Children Act 2001, the Proceeds of Crime Acts 1996 and 2005, and the Criminal Justice Act 2006. These statutory measures altered the topography of the Irish criminal justice system, presaging the erosion of pre-trial rights, the introduction of presumptive sentences, the use of restorative justice techniques and the establishment of civil asset forfeiture. This article ascertains the strength of various aspects of Garland's thesis by applying them in the Irish context, having regard to the shifts in criminal law and policy which have taken place. An attempt is made to fuse theory with practice by identifying both parallels and points of divergence between Garland's work and contemporary developments in the Irish criminal justice system.

After outlining Garland's core thesis, diverse aspects of *The Culture of Control* will be focused on. First, Garland's "indices of change", including the decline of rehabilitation, the strengthened role of the victim, the growing use of imprisonment and the increased significance of public protection, will be explored, and their presence in Ireland will be considered. Garland explains late-modern criminal justice by reference to characteristics of contemporary life, and argues that the social organisation of late-modernity and free-market, socially-conservative politics are of considerable influence. Diverse social, cultural and political changes to Irish society will be outlined, given their relevance to the current trajectory of the justice system. Then Garland's notion of the "crime complex", which develops in response to dramatic social and cultural changes, will be examined. In the crime complex high crime rates are seen as normal, public protection is the focus of

penal policy, and the state is seen as impotent. The extent to which a crime complex has developed in Ireland will be explored, by reference to crime rates and fear of crime.

The next facet of Garland's work to be examined concerns the predicament facing the late-modern state, in which high crime levels are normal and the state is perceived as ineffectual. Garland categorises the state's reactions to this predicament as adaptive and non-adaptive responses, which either acknowledge the problem and adapt to it, or deny it. Irish criminal justice measures will be analysed to ascertain if they fit within this adaptive/non-adaptive paradigm.

Finally, a number of flaws in Garland's thesis will be described, in particular as it relates to Ireland. His characterisation of the demise of penal welfarism, his conflation of different jurisdictions, and his depiction of the state's adaptation are contentious. Moreover, his failure to consider due process rights in his study of the development of a culture of control represents a key flaw.

## The Culture of Control

Garland analyses the dramatic developments in the social response to crime in two late-modern societies, the United Kingdom and the United States of America, and assesses the social, cultural, and political forces behind them. He claims that a reconfigured field of crime control is emerging, with changed objectives and orientation (Garland 2001, p 21). Penal modernism, with its support for social engineering and its belief in the State's ability to improve social conditions and reform offenders, has been usurped in late-modernity by opposing ideologies with different motivations and aims.

Essentially, Garland's thesis is that changes in criminal justice may only be fully comprehended by reaching beyond the institutions of crime control to consider structural changes in politics, society and the economy. By focusing on the social responses to crime, he identifies the "broad organizing principles that structure the contemporary ways of thinking and acting in crime control and criminal justice" (Garland 2001, viii). Garland aims to move attention from legal issues and institutional practices to their social contexts (Garland 2004, p 162).

## Indices of Change

Garland identifies various indices of change in the criminal justice field in Britain and the US, many of which are evident in the Irish context.

First, Garland draws attention to the decline of rehabilitation, evidenced in the fact that rehabilitation no longer represents the overarching ideology of the penal system, or even the leading purpose of any penal measure. In the 1950s and 1960s, there was a general professional consensus in the US and the UK that penal welfarism was the appropriate ideology to underpin the justice system. However, Garland contends that this support collapsed in the mid-1970s, due to a general disenchantment with the criminal justice state. Correctionalism was dislodged from its central position and the view that "nothing works" took hold, portending the unravelling of the modernist penal framework.

The second index of change considered by Garland is the re-emergence of punitive sanctions and expressive justice. While the modernist penal model shunned vengeful or deliberately harsh punishments, recent trends in the US and the UK indicate a resurgence in anti-modern, retributive sanctions. Garland claims that just deserts retribution is now a policy goal, and highlights the increasing use of the death penalty, chain gangs and corporal punishment in some US states. Although the UK has not succumbed to such severe retributive measures, a marked change in the tone of official discourse so as to include concepts of condemnation and punishment may be seen. Furthermore, public opinion often takes priority over professional penological judgments, and the symbolic, expressive and communicative aspects of penal sanctions are more significant.

It seems that punitive sanctions are tentatively re-emerging in Ireland. Although the death penalty is constitutionally precluded (Article 15.2.2 of the Irish Constitution) and measures such as chain gangs are unlikely to be adopted, a just deserts policy of sentencing was recommended by the Irish Law Reform Commission, which stated that retribution is a valid foundation for punishment (Law Ref Comm 1996). In addition, the Sex Offenders Act 2001 established a sex offenders' register, which was explicitly recognised by Garland as a milder version of punitive sanctions imposed in the US. Furthermore, Fine Gael, a major political party in Ireland, proposed the introduction of boot camps for young offenders, although this suggestion was dismissed by the Minister for Justice (Department of Justice Press Release 2006).

Allied to the re-emergence of punitive measures is Garland's suggestion that the tone of crime policy has altered: "[t]he emotional temperature of policy-making has shifted from cool to hot" (Garland 2001, pp 10-11). Retribution is seen as more appropriate than adherence to a socially engineered solution. Moreover, the salience of the fear of crime in peoples' lives and the anti-modern depiction of the offender as a dangerous and incorrigible predator has resulted in a sensationalist political and popular discourse. This change in tone is apparent in Ireland, with the growing portrayal of offenders as avaricious and rapacious predators or career criminals, or feckless youths, rather than deprived or maladjusted delinquents.

A further index of change suggested by Garland is the return of the victim. In contrast to the modernist approach, in which the individual victim was of little significance other than as a witness to a crime and as the party whose complaint triggered the action of the state, the victim is now a central representative character, whose interests are often invoked to support punitive measures. Any concern for accused's rights is regarded as detracting from the appropriate respect for victims: in this zero-sum game, the offender's gain is the victim's loss. This enhancement of the status of the victim is evident in Ireland in the establishment of the Victim Support agency and the use of victim impact statements in court (Criminal Justice Act 1993).

In addition to the victim's newly elevated position, Garland contends that public protection has become a principal theme of criminal justice policy, and that diminishing attention is paid to the civil liberties of suspects and offenders. No longer is the state an entity from which we must be protected: rather it is from each other that we must be

protected by the state. The imperative of public protection has provided the impetus for the introduction of various policies in Ireland, from the restriction of bail laws by the Bail Act 1997, to the aforementioned sex offender orders. As Kilcommins et al. note, the fate of the general public and of potential victims of crime is increasingly fused (Kilcommins et al. 2004, p 29). The public interest does not encapsulate the fate of the accused or offender but is equated with that of the victim, given the dominant portrayal of the victim as an emblematic figure whose experience could one day be our own.

Furthermore, Garland claims that law and order has been politicised and that a new populism is emerging. This is evident from the fact that crime policy is no longer entrusted to professional expertise, as was the case under the modernist framework. Currently, the opinion of political bodies and of the public seems to carry more weight than professional research findings. Crime control measures are encapsulated in sound-bite statements, and are announced in political settings like party conventions. Moreover, there has been a dramatic convergence of policy proposals of all the major political parties, none of which wish to be seen as liberal or soft on crime. Indeed, it is unquestionable that criminal justice has been politicised in Ireland: crime features prominently in political party manifestos, and parties vie to be seen as the toughest on crime.

The reinvention of imprisonment is a fundamental index of change for Garland. The last quarter of the twentieth century saw the popularity of the prison increase exponentially, most dramatically in the US, but also in the UK. In the culture of control the prison is regarded not as a mechanism of reform or rehabilitation but as a means of incapacitation and punishment that satisfies popular and political demands for retribution and public safety. This elevated position of the prison is also identifiable in Ireland. While fines and community orders are still commonly used, increasing numbers of offenders are being imprisoned. In 2005, Ireland was recorded as having 85 prisoners per 100,000 population, a rate which falls in the middle of European standards (Walmsley 2005, p 5). Nevertheless, given that the rate in 1997 was 65 per 100,000 (Walmsley 1999, p 5), this represents an increase of 30 per cent, indicating a growing use of the prison.

Garland regards the transformation of criminological thought as both a factor in, and evidence of, the growth of a culture of control. While modernist criminological theories focus on deprivation and labelling, control theories are now to the fore. In contrast to modernism which believes that humans may be coerced into unlawful behaviour by deprivation, control theories see humans as rational, self-serving and potentially anti-social. Crime is regarded as a part of normal social interaction which may be explained by reference to standard motivations. This transformation of criminological thought is apparent in the growing use in Ireland of situational controls, such as CCTV, to prevent crime, given that it regards the offender as a rational actor.

The expansion of crime prevention and community safety tactics to include “preventative partnerships”, such as community policing schemes and neighbourhood watch programmes, is a further index of change. The preponderance of neighbourhood watch

schemes in Irish communities is a key example of this development (there are 2,601 such schemes in the country), as is the use of CCTV.

The inclusion of civil society in crime control has facilitated its commercialisation, with the expansion of a private security industry. Moreover, the privatisation of prisons in the US indicates the divesting of penal responsibility to private enterprises, which are now regarded as necessary partners in security and crime control. The ubiquity of security guards in shops and nightclubs in Ireland illustrates the commercialisation of crime control, in which traditional state duties are devolved to private agents. Furthermore, although prisons have not been privatised, the privatisation of prison escorts has been mooted for a number of years (Irish Times, 21 April 2005), and prison privatisation was recommended by the Inspector of Prisons (Kinlen 2005).

Garland suggests that the development of new management styles and practices represents a further index of change. The objectives and priorities of criminal justice agencies are altering, with a growing emphasis on the cost-effective management of risks and resources. In addition, managerialism has become entrenched, and auditing and system-monitoring are more common. Such a change is evident in the terminology used in a recent official report, which refers to “main outputs produced by the Probation and Welfare Service” [emphasis added] (Comptroller and Auditor General 2004, p 16). It is also noteworthy that the Probation and Welfare Service is now simply called the Probation Service, possibly revealing a shift in the aims of the agency.

The final index of change noted by Garland is the existence of a perpetual sense of crisis. There is a growing belief that modernist institutions and practices are no longer adequate to tackle crime. Crucially, the problem is not seen as one of implementation, but rather of theory failure. Confidence in the justice system has been substantially eroded, resulting in an enduring feeling of crisis. While O'Donnell and O'Sullivan argued (2003 p 57) that any crisis in the Irish system was transient, current political statements suggest otherwise. Indeed, Ireland has been compared to Bogota “such is the extent of gangland murder, assaults and violent crime” (Labour Press Office 2005); Dublin has been described as akin to Los Angeles “in terms of gang violence” (Irish Times, 27 March 2006); it is alleged that “gangland law now exists” (Irish Times, 16 November 2005); and that “many of our urban areas are terrified by rampant gangland crime, which is...making huge parts of the country ungovernable” (Seanad (Senate) Debates, 12 November 2003, Vol 174, Col 891).

These indices of change embody the culture of control which Garland contends is developing in the US and the UK. As was illustrated, similar developments may be identified in Ireland, albeit in a lesser form. After delineating these changes, Garland seeks to explain them by reference to the character of late twentieth-century society, and more specifically two forces, viz. the social organisation of late-modernity, and free-market, socially conservative politics (Garland 2001, p 72). The social, economic, and cultural changes of late-modernity and the political adjustments to these changes represent the ‘transformative forces’ which impact on the field of criminal justice.

## Social and Cultural Change in Late-Modern Societies

Garland explores the major transformations which have taken place in various facets of late-modern societies, in citizens' personal lives, in the workplace and in the community (Garland 2001, p 77), and claims that these influence crime control tactics.

The capitalist system was of great importance in shaping late-twentieth-century society: mass production generated an ethic of consumerism, the changing market structure and the resulting mobility of production resulted in decreasing job security, while technological advances fundamentally altered late-modern life, social norms and expectations. Moreover, the restructuring of the family and the role of women represented a pivotal change in Western societies in the post-war period. Married women and mothers entered the paid workforce, and the structure of the family was transformed: the age at which people married increased, as did the rate of divorce, and the number of children per family decreased. In addition, more children were born to single mothers, and the average household size decreased.

Changes in social ecology further altered life in late-modern societies. The proliferation of car ownership meant that the distance between home and work, schools or shops decreased in significance, resulting in the diminishing significance of local ties, the depopulation of inner cities, and the increasing privatisation of family life. Garland identifies the democratisation of social and cultural life as a key impetus for social change in the US and the UK. From the 1950s onwards, civil liberties were extended and there was a decline in deference to social mores and to the church. Authority and moral absolutism gave way to moral relativism, pluralism, and individualism.

## Social and Cultural Change in Ireland

Similar social and cultural alterations to Irish society occurred in the past 30 years. The structure of the family and the composition of the workforce have been transformed, mainly as a result of the changing role of women. Moreover, the strengthening economy, the spread of mass media and technology, the weakening of the Catholic Church, and the changes in population have had considerable influence on contemporary Irish society.

Throughout the twentieth century the number of women in the Irish workforce increased, aided by the abolition of the bar on women working in the civil service after marriage, implemented by the Civil Service (Employment Of Married Women) Act 1973. While women made up 33.03 per cent of the workforce in 1988, by 2005 this had increased to 41.82 per cent (see CSO Labour Market Principal Statistics). The make-up family also changed: social welfare schemes furthered the independence of single-parent families, the average age of mothers increased (CSO Principal Statistics), and the number of children born to each woman decreased (UNDP 2005, p 232), as did the size of households (CSO 2002).

While the workforce has altered considerably to include increasing numbers of women, there has also been a change in the proportion of the workforce employed in each sector. There has been a decrease in the numbers employed in the agricultural sector,



highlighting the erosion of rural life in Irish society. While in 1973 24 per cent of employment was in agriculture (CSO 2004a, xv), this fell to 9.1 per cent in 1998 and 6.37 per cent in 2004 (CSO 2005a, p 35).

In addition, the Celtic Tiger had a dramatic effect on Irish society, with low unemployment levels (CSO 2004a, xiv) and a remarkable increase in Gross Domestic Product (UNDP 2000, p 182; OECD 2006). Nevertheless, the consequences of the economic boom have not been entirely positive, with growing social polarisation (Kirby 2002, p 5) and an increase in relative poverty (Kirby 2002, p 57; UNDP 2005, p 334), and this may have substantial consequences for social cohesion.

Moreover, the economic boom resulted in the return of many emigrants, in addition to an increase in immigration (CSO 2006). In addition, the social ecology of life in Ireland, in particular population distribution, has altered in recent years, with a rise in the numbers living in urban centres (UNDP 2005, p 232), the rate of car ownership (CSO 2002, p 29), and the average distance travelled to work (CSO 2004c, p 2).

Significantly, the influence of the Catholic Church is fading. While 89 per cent of the population in 1975 attended church at least once a week, this fell to 60 per cent in 1999 (O'Connell 2001, p 61). Although Irish society retains a far stronger belief in a god than other European countries (Special Eurobarometer 2005, p 9), the influence of the Church on private morality has waned. The use of contraception is widespread, the rate of childbirth outside marriage is steadily increasing (CSO 2005b, p 62), cohabitation before marriage is common (CSO 2003), and homosexuality has been decriminalised (Criminal Law (Sexual Offences) Act 1993).

Drastic social change occurred in Ireland in the last quarter of the twentieth century, mirroring the transformation in British and American societies. Although the alterations to Irish society happened at a later stage, the impact was comparable. The insecurity caused by dramatic social upheaval and the concomitant feeling of vulnerability may explain the adoption of more punitive measures in the criminal justice sphere. In addition, Garland identifies significant political shifts which influenced crime control policy in the UK and the US.

## Political Change in Late-Modern Societies

Garland argues that social and cultural changes in the US and the UK had a significant effect on the politics of the 1960s and 1970s. While these societal and cultural developments were initially viewed as positive, in the 1970s opinion became more reactionary (Garland 2001, p 94). Politicians capitalised on popular discontent about the increase in crime, growing welfare expenditure, family breakdown and the demise of traditional values to introduce populist and punitive policies. The politics which developed can be bracketed under the rubric of the New Right: its neo-liberal element embodied a reassertion of market disciplines and an unshakeable faith in competition and enterprise, while its neo-conservative aspect involved an authoritarian and anti-modern re-assertion of moral discipline.

Garland remarks that crime control was not important politically until the 1960s in the US and the mid-1970s in the UK, when the approach to criminal justice arguably became more punitive. According to Garland, the policies introduced in the US and the UK developed from a new collective experience of crime and insecurity, constructed by the characteristics of late-modernity. These extra-political factors made the policies technically possible and desirable to the electorate.

## Political Change in Ireland

Elements of the New Right described by Garland are evident in Ireland. It is arguable that a particularly Irish variety of neo-liberalism emerged with the Celtic Tiger, given that state competitiveness in the global economy is the primary goal of public policy, the societal antipathy to taxation and the prominence of individualism and materialism (Kirby 2002, p 160). Nevertheless, while neo-liberal influences hold weight in Ireland, this is tempered by the established welfare system and the blend of parochialism and pragmatism in Irish politics.

In addition, neo-conservative strands may be discerned in Irish political discourse, although this may not necessarily be in response to social and cultural change, but rather because of the country's conservative past. An emphasis on loyalty to the community is apparent in political discourse, as is the reassertion of discipline, for example in anti-social behaviour orders (Criminal Justice Act 2006, Part 11). Moreover, the political parties in Ireland are conservative on moral issues such as abortion, although views on matters such as divorce have become more flexible.

While social and cultural changes in Ireland have not prompted a comparable reactionary adoption of New Right policies as was the case in the US and the UK, facets of neo-liberal and neo-conservative ideologies are evident in Ireland, and may have an influence on criminal justice.

## The Crime Complex

Social, cultural and political changes in Western societies result in feelings of insecurity, which in turn generates a pronounced fear of crime and contributes to the development of a "crime complex".

From the 1960s onwards, crime and the fear of crime gained an increased salience in daily life in the US and the UK, encouraged by the reactionary politics of the time. Garland characterises the cultural formation which grew around the phenomena of high crime rates and increased insecurity as the "crime complex", which embodies certain ideas: high crime rates are seen as a normal social fact; emotional investment in crime is widespread; crime issues are politicised and represented in emotive terms; concerns about victims and public safety dominate policy; the criminal justice state is regarded as inadequate; there is a large market in private security; and a crime consciousness is institutionalised in the media and popular culture (Garland 2001, p 163).

## The Crime Complex in Ireland

The notion of the crime complex, which develops as a result of high crime rates and increased insecurity, is of import in exploring the current state of affairs in Ireland (see Kilcommins and Vaughan 2004). In the crime complex, the threat of crime is a possibility that must always be kept in mind, and crime is believed to be getting worse, regardless of statistics.

Crime was not regarded as an important issue in Ireland in the 1980s, and this feeling persisted into the early 1990s.<sup>2</sup> However, later that decade there was a substantial increase in concern about crime.<sup>3</sup> This was likely to have been caused by the notable rise in 'gangland' killings, coupled with the low conviction rate for such crimes (Dooley 1995, p 26; Dooley 2001, p 15 et seq.). Punitive opinions were galvanised in 1996 with the murders of Garda (police officer) Jerry McCabe and investigative journalist Veronica Guerin, and concern about crime has remained at high levels into the twenty-first century (Irish Times, 5 June 2001).

It is evident that social change in Ireland was accompanied by a sense of insecurity and vulnerability. Coupled with the increased consequence of crime in people's lives, this may provide the necessary bedrock for the development of a crime complex. Kilcommins et al. claim that it is not clear that high crime rates have become a normal social fact, and speculate that rates may remain below the critical threshold necessary to invoke the crime complex (Kilcommins et al. 2004, p 92). However, the crime complex is predicated on the notion that avoidance of crime and fear of crime is a central principle in the organisation of people's lives. While it is questionable whether crime represents a fundamental organising principle, it is certainly of significant influence, and crime prevention measures such as personal- and house alarms and the avoidance of certain areas are commonplace. Although the fear of crime has not reached crippling proportions, it nevertheless has far greater currency than it did a generation ago.

As the CSO Survey on Crime and Victimisation reported, the percentage of adults who experienced theft more than doubled between 1998 and 2003 (CSO 2004b, p 2). In addition, the proportion of people who see crime as a very serious or serious problem increased between 1998 and 2003 from 76.7 per cent to 80.1 per cent (Ibid, p 15). Moreover, more than half of the population admit to worrying about becoming a victim of crime, suggesting that crime has a real significance for a sizeable portion of citizens.

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<sup>2</sup> Between 1 and 3 per cent saw crime/law and order as the most important issue facing the country. See Survey for Irish Times by IMS (code: J.4880) 22 May 1981; Survey for Omnibus by IMS (code: J.452) 14 February 1982; Survey for Independent Newspapers LTD by IMS (code: JFM/DB J.9320) 9 November 1982. Similar figures were recorded in the 1990s: Survey for The Sunday Press by Lansdowne (code: am/ra/ck4L-471) 24 November 1994.

<sup>3</sup> In 1996 49 per cent viewed crime as the most critical issue facing the government (Survey for Sunday Independent by IMS (code: 6S-308), 4 July 1996) and the following year 41 per cent believed that crime/law and order/justice was a main election issue (Survey for Irish Times by MRBI (code: MRBI/4510/97), 26 March 1997).

However, approximately 43 per cent of the population does not worry about becoming a victim of crime, a heartening fact which may imply that the crime complex is not as entrenched as in the US. Nevertheless, the salience of crime in contemporary life in Ireland suggests that the crime complex is a useful and persuasive means of conceptualising current sentiments and fears towards crime.

In addition to the idea of the crime complex, Garland argues that criminal justice authorities face a criminological predicament which influences all policy decisions (Garland 2001, p 105).

## The New Predicament

The predicament facing late-modern states concerns the normality of high crime rates and the perceived limitations of the criminal justice state. From the mid-1960s, crime rates in the US and the UK increased exponentially, and by the 1970s high crime rates had become a normal social fact. Despite their stabilisation in the 1990s, rates remain at levels unprecedented prior to the 1960s.

Similarly, Ireland experienced a dramatic increase in crime rates in the final quarter of the twentieth century. Although the proportionate increase in crime rates in Ireland was akin to that in the US and the UK, it began from a much lower level of crime and occurred at a later stage (Kilcommmins et al. 2004, p 90). From the late-1960s onwards, a dramatic increase in the crime rate was evident: in 1970 the rate of indictable crime was 1,043 per 100,000 population; in 1980 2,140 per 100,000; and in 1990 2,500 per 100,000 (Kilcommmins et al. 2004, p 109). Moreover, while on average 10.3 homicides were committed per year in the 1950s, this rose to 25.9 in the 1970s (O'Donnell 2005, p 103), and to 54 in 2005 (An Garda Síochána 2006, p 20), a fivefold increase in as many decades. Garland notes that crime rates in the US and the UK stabilised in the early-1990s, and indeed this pattern was repeated in Ireland after a delay of several years (Kilcommmins et al. 2004, p 90). Notwithstanding this decrease, crime rates remain at unprecedented levels (O'Donnell et al. 2005).

In addition to the normalisation of high crime rates, Garland argues that the acknowledged limitations of the criminal justice state are influential in policy formation. This perceived impotence as regards crime control seems to be supported by the actuality of the Irish situation. There is a pervasive sentiment that the Irish State is unable to adequately tackle the problem of crime, as is evidenced in numerous opinion polls (eg. Survey for Sunday Independent, Q 11).

The recognition that the sovereign state is not capable of delivering law and order and of controlling crime on its own results in a predicament for government authorities: whilst there is a need to withdraw or reassess the claim that the state is the primary provider of security and crime control, doing so could be disastrous politically. Garland regards this predicament as resulting in the formation of 'volatile and ambivalent' policies, each of which may be classified as either an adaptation to reality, or denial (Garland 2001, p 110).

## Adaptation to Reality

The state may adapt to reality by the professionalisation of justice, systematic information-gathering and better caseload-management. Furthermore, justice may be privatised and commercialised, and criminal justice agencies may develop a managerialist ethos with new incentives. Defining deviance down, by shifting complaints out of the system, represents a further example of an adaptive response, as does the redefinition of success and the scaling down of expectations. Stress is placed on incapacitation rather than rehabilitation, and a distinction may be made between the punishment of crime which remains the business of the state, and the control of crime which increasingly is deemed to be beyond its remit. Furthermore, the redistribution of responsibility to non-state actors is a quintessential adaptive response, in which the state enlists the help of private actors and forges alliances with civil society.

Evidence of the Irish State's adaptive responses may be found in recent developments. The establishment and operation of the Criminal Assets Bureau and its ability to seize criminal assets is an archetypal adaptation to reality in the face of the threat posed by organised criminality (Proceeds Of Crime Act 1996; Criminal Assets Bureau Act 1996). Civil forfeiture involved a recognition on the part of the State that conventional methods of tackling organised crime were ineffective and that a 'radically new and thorough approach' was required (Seanad Debates (a) Col 420). It was stated in the legislature that:

"If traditional methods fail we must devise new ones. If we cannot punish, deter or reform these people we must set a new aim, to stop them from operating their evil trade....If we cannot arrest the criminals, why not confiscate their assets?"  
(Dáil Debates (a) Col 2435)

As criminal prosecution was deemed to be ineffective, a new mechanism was devised which eased the burden on the State in controlling organised crime.

In another adaptive measure, the State enlists help from civil society in the context of money-laundering offences. S 32 of the Criminal Justice Act 1994 requires a range of bodies, including banks, building societies and solicitors, to report suspicious transactions and retain certain evidence, so as to facilitate more readily the detection and successful investigation of money-laundering. This diversified approach recruits external agents in the investigation of crime, thereby expanding the State's partnership base.

The establishment of a sex offenders' register (Sex Offenders Act 2001, Part 2) and the notification requirements on convicted drug offenders regarding travel and change of address (Criminal Justice Act 2006, Part 9) represent further adaptive responses of the Irish State. Like the sex offenders register which was conceived as a 'tool for risk management' (White 2001, p 11), the notification requirements focus on the control of drug-traffickers, rather than on rehabilitation or reform. Furthermore, evidence of the professionalisation of criminal investigation is apparent in the use of modern technology,

such as mobile-phone location, by the Gardaí, to supplement the traditional grassroots gathering of intelligence.

Numerous examples may be found of the adaptive responses of the Irish State to the predicament it faces as regards crime control. However, Garland argues that the reactions of the late-modern state to its predicament are not limited to adaptations to reality, but also encompass a denial of the problem.

## Denial

Non-adaptive responses manifest in a denial of the situation with a reassertion of the myth of the sovereign state and its power to punish. The state acts out by abandoning reasoned action and retreats into expressive mode so as to re-establish public confidence. Acting out may provide relief and catharsis, given that it serves to denounce the crime and reassures the public: the fact that ‘something is being done’ is seen as gratifying in and of itself (Garland 2001, p 133). Furthermore, punitive responses may seek to counterbalance the state’s inability to adequately tackle crime or protect the public in other respects.

The introduction of presumptive minimum sentences may be categorised as a denial on part of the Irish State, given that such sentences reaffirm the state’s ability to punish and control crime. Section 4 of the Criminal Justice Act 1999, which inserts s 15A into the Misuse of Drugs Act 1977, provides that any person convicted of drug possession with a value of at least €13,000 shall be imprisoned for least 10 years, unless there are exceptional and specific circumstances which would make such a term unjust. In addition, the Criminal Justice Act 2006 introduces presumptive minimum sentences of between five and 10 years for firearms offences, while the Criminal Justice Bill 2007 will extend this sentencing scheme to cover even more crimes.

It is arguable that presumptive sentences exemplify a non-adaptive response to problem of crime control. Indeed, the message that the ‘mandatory’ sentence for drug trafficking would send to criminals was noted in the legislature, as was its ability to demonstrate society’s abhorrence of the crime (Dáil Debates (b) Cols 787 and 837). However, as Garland notes, “tough on crime” measures are not merely an expressive mode of action, but “simultaneously evince a more instrumental logic” by incorporating the demands of risk management and public protection (Garland 2001, p 142). The Irish provisions possess a dual rationale: while they demonstrate the State’s opprobrium, they also serve instrumental ends, by incapacitating and removing criminals from society and by acting as a deterrent. Therefore, such measures are not solely concerned with the reassertion of state power but also incorporate adaptive aspects.

When applied in the Irish context, Garland’s thesis provides a heuristically useful means of assessing recent developments in this jurisdiction. Evidence of the indices of change, the crime complex, and the dichotomous ways in which the state responds to the predicament of high crime rates and its own limitations may be found in legislation and policies in the criminal justice system in Ireland. Notwithstanding the value of Garland’s

work as an interpretive tool, a number of criticisms should be outlined, in particular, weaknesses as his theory relates to Ireland.

## Criticising The Culture of Control

First, Garland's depiction of the demise of welfarism is problematic, given that it is questionable whether the concept ever dominated practice in the US and the UK to the extent that he suggests (Zedner 2002, p 344). In addition, welfare's decline was not as sudden and complete as he claims, given that probation and community service carried on as before. Indeed, in Ireland, penal welfarism did not exist in any sophisticated way in the 1960s and 1970s, and so could not experience the same demise as described by Garland (Kilcommins et al. 2004, p 87). Moreover, the Irish courts continue to make use of fines and probation, and rehabilitation is still emphasised in Irish prisons (Irish Prison Service 2003, p 20).

Garland has also been criticised for failing to adequately consider the differences between the US and the UK (Young 2002, p 232 et seq.). Despite the substantial divergences between the two countries, Garland presents the emergence of the crime complex as comparable in both. As Kilcommins et al. note, while Garland claims to be focusing on the UK and the US, in fact he studies England and Wales and a distorted image of the US caused by the punitiveness of southern states (Kilcommins et al. 2004, p 234). The severe response to crime in these states is not representative of the US as a whole, and may indicate that the crime complex is not as entrenched in the US as Garland suggests. Moreover, the application of the crime complex theory in Ireland illustrates that while facets of this phenomenon are perceptible, it is questionable whether it is as embedded as seems to be the case in the US.

Moreover, Garland's claim that the state defines deviance down in adapting to the crime situation has proved contentious, with Beckett arguing that the American war on drugs contradicts his argument (Beckett 2001, p 917). Indeed, in the Irish context deviance was defined up in the 'zero tolerance' approach adopted by Fianna Fáil in the mid-1990s (Kilcommins et al. 2004, p 216; (O'Donnell and O'Sullivan 2003, p 57). However, the claim that deviance is defined down is evident in the Children Act 2001, with its adoption of a restorative justice diversion programme (Part 4), and the expungement of criminal records (s 258).

In addition, the predicament which Garland claims is facing the late-modern criminal justice state is not readily identifiable in Ireland. The Irish State has not rescinded its claim to control crime, nor is there a general acceptance on the part of the Gardaí that crime poses ineluctable problems. Furthermore, Garland's depiction of adaptive responses is not wholly sustainable in Ireland, as the Irish state and its agents, in particular the Gardaí, have not adapted to the same extent as seems to have occurred in the US and the UK (Kilcommins et al. 2004, p 223). For example, when the Garda reserve force, which could be regarded as a preventative partnership and an adaptation to the problem of inadequate manpower, was first mooted, it was trenchantly opposed by Garda representative bodies. Moreover, there is little evidence of the sophisticated use of

information technology, which is an archetypal adaptation, in Ireland's policing system (Kilcommins et al. 2004, p 270).

Garland's depiction of punitive policies has been criticised on the basis that he overstates the significance of punitive imperatives and disregards other rationales for penal measures. Indeed, recent developments in the US and Britain may demonstrate an increasing preoccupation with confinement, incapacitation or deterrence, rather than an intensification of punitiveness (Sparks 2000, p 136; Matthews 2005, p 178). Furthermore, while the steady increase in imprisonment rates in the US may indicate a punitive trend, it is questionable whether this is the case in Ireland, for although political discourse emphasises the need for harsh sentences, the judiciary have been slow to impose the presumptive for drug trafficking (McEvoy 2005). Moreover, the incapacitative and deterrent elements of the presumptive sentences are also of import, rather than solely punitive objectives.

While Garland (p 21) cautions that short-term movements should not be mistaken for structural change, he fails to observe his own warning given that he seems to regard the present situation as one of exceptional social rupture (Zedner 2002, p 343; Loader and Sparks 2004, p 15). A related criticism concerns Garland's overly pessimistic view of crime control and his tendency to disregard opposing trends, which ironically may result in the entrenchment of the culture of control (Zedner 2002, p 335). For example, the levelling-off or decrease in crime rates in various Western societies in the 1990s is not accorded sufficient weight by Garland. Similarly, while measures which enhance the powers of Irish State and alter the criminal justice system to a considerable extent have been introduced, many core values and elements of the system remain unchanged, implying that the development of a culture of control should not be overstated. Although the right to silence,<sup>4</sup> to bail,<sup>5</sup> and to a jury trial<sup>6</sup> have been eroded in recent years, fundamental notions on which the criminal justice system is premised, such as the right to a fair trial as protected by Article 38.1 of the Irish Constitution, the presumption of innocence, and the right to legal representation, remain.

Garland's core aim is to analyse the trajectory of the criminal justice system in the UK and the US by moving beyond the criminal justice field to wider society. He maintains that a thorough understanding of the system is best attained by studying other facets of society. Nevertheless, his failure to assess the concept of due process rights, in either a conceptual or a more practically-grounded sense, represents the most fundamental oversight in this work. As Kilcommins notes, Garland 'devoted little attention to the dwindling power of the accused vis-à-vis the state' (Kilcommins et al. 2004, p 142). While his consideration and analysis of other societal and political factors is

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<sup>4</sup> S.52 of the Offences Against The State Act 1939, s 15(1) of the Criminal Justice Act 1984 and s 9(1) of Offences Against The State (Amendment) Act 1998 penalise the accused for remaining silent, while ss 18 and 19 of the 1984 Act, s 7(1) of the Criminal Justice (Drug Trafficking) Act 1996 and s 5(2) of the 1998 Act allow inferences to be drawn from silence.

<sup>5</sup> S 2 of the Bail Act 1997 allows bail to be refused to a person charged with a serious offence if the court is satisfied that this is necessary to prevent the commission of a serious offence.

<sup>6</sup> The Offences Against The State Act 1939 allows the Director of Public Prosecutions to direct that a case be heard before the non-jury Special Criminal Court.



comprehensive and worthwhile, this omission ensures that one of the most crucial factors in the engendering of a culture of control is overlooked. Current trends in the criminal justice systems of Western liberal democracies and more specifically, in Ireland, are predominantly facilitated by the introduction of legislative measures and their interpretation by the courts. Inclusion of the concept of due process would ensure that the Garland's analysis incorporates all factors which prompt the burgeoning of a culture of control.

## Conclusion

The Culture of Control contains numerous theoretical insights which are of significance when analysing current trends in the Irish criminal justice process. Garland's indices of change offer a comprehensive overview of the alterations which have occurred in the criminal justice field in the US and the UK, and comparable developments in Ireland are readily evinced. His analysis of the social, cultural and political factors at play in the late-twentieth century provides a persuasive explanation of the shift in crime control policy, and again, evidence of such societal alterations were found in the Irish context. Moreover, while the crime complex is less entrenched in Ireland than in the US, the first tentative steps of such a culture may be identified. Finally, Garland's explanation of the adaptive and non-adaptive reactions to the predicament facing the state was seen to be a convincing conceptualisation of the often inconsistent strands of penal policy. The contradictory objectives underpinning contemporary criminal justice may be discerned in Ireland, although the denial response of the State is less trenchant than in other jurisdictions.

Although a number of flaws with Garland's thesis were identified in this article, this does not undermine the value of his work in a theoretical sense, as it presents an expansive and generally persuasive interpretation of the trajectory of justice policy in Western societies. Moreover, the application of Garland's theories indicates that his concepts are substantiated by recent trends in Ireland, and his work provides a useful lens through which current Irish criminal justice policy may be viewed and conceptualised.

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